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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,633	07/31/2001	Shunpei Yamazaki	740756-2345	3382
22204 7590 12/17/2009 NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128				
EXAMINER				
TRAN, THIEN F				
ART UNIT		PAPER NUMBER		
2895				
MAIL DATE		DELIVERY MODE		
12/17/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/917,633	Applicant(s) YAMAZAKI ET AL.
Examiner Thien F. Tran	Art Unit 2895

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 6, 14-16, 18-20, 22-24, 26-28 and 30-32.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Thien F Tran/
Primary Examiner, Art Unit 2895

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments are not convincing. Applicant has failed to provide convincing evidence that the specification clearly states or discloses that the metal is added to the second crystalline portion. Note that the second crystalline portion in contact with a metal does not mean that metal is added directly to the second crystalline portion. Note that interdiffusion of metal and silicon across an interface of the source/drain regions and the metal source/drain electrode will cause junction spiking problem resulting in large leakage currents or even electrical shorts. Therefore, unless the specification explicitly discloses that metal is added to the second crystalline portion, one cannot assume that metal would be added to the second crystalline portion as alleged by applicant. Furthermore, metal coupled with silicon and crystal silicon is expanded away therefrom as the starting point does not indicate that metal is added into the second crystalline portion. Indeed, Oka reference clearly states crystal nuclei are formed near the interface between the metal layer and the silicon layer, and crystal growth starts. Oka further discloses the diffusion of metal into the silicon layer is prevented. Therefore, the limitations of metal added to the second crystalline portion constitute new matter.

In response to applicant's argument that the first crystalline portion is different than that of the second crystalline portion, the examiner respectfully disagrees with the remark. Applicant has failed to provide support that metal is added to the second crystalline portion. Applicant's argument cannot take the place of evidence in the record. Applicant has failed in producing scientific evidence to show the compositions of the first crystalline portion and the second crystalline portion. In fact, the drawing and the specification as originally filed does not explicitly disclose a first crystalline portion and a second crystalline portion as claimed. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application: under 37 CFR 1.105 (1) (viii) Applicants are required to provide technical information apparently known to applicants concerning factual information pertinent to patentability, to support experimental evidence such as graph or data that the metal concentrations in the first crystalline portion and the second crystalline portion within the context of the invention defined by claims 6, 14, 15, 16, have been reduced to practice.